

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

MARIO HERRADA-GONZALEZ,  
Petitioner,  
v.  
JERRY HOWELL, et al.,  
Respondents.

Case No. 2:20-cv-01013-GMN-DJA

**ORDER**

**I. Introduction**

Petitioner Mario Herrada-Gonzalez has filed an application to proceed in forma pauperis (ECF No. 1). Attached to the application are a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, exhibits to the petition, a motion for appointment of counsel, and a motion for leave to file additional grounds. The court considers these documents, and the court will provisionally appoint the Federal Public Defender to represent Herrada-Gonzalez, conditioned upon payment of the filing fee.

**II. Background**

On December 22, 2010, pursuant to a jury verdict, Herrada-Gonzalez was convicted of one count of first-degree murder with the use of a deadly weapon and one count of robbery with the use of a deadly weapon. ECF No. 1-2 at 5-6. Herrada-Gonzalez appealed. On February 10, 2014, the Nevada Supreme Court found that the evidence was insufficient to support the verdict

1 of guilt for robbery with the use of a deadly weapon; the Nevada Supreme Court affirmed on all  
2 other issues. ECF No. 1-2 at 7-19. On May 11, 2015, the state district court entered an amended  
3 judgment of conviction. ECF No. 1-2 at 23-25. It appears that Herrada-Gonzalez did not appeal.  
4 See ECF No. 1-2 at 29 (noting entry of amended judgment and then filing of post-conviction  
5 habeas corpus petition).

6 On March 16, 2016, Herrada-Gonzalez filed a post-conviction habeas corpus petition in  
7 the state district court. ECF No. 1-2 at 29. The state district court appointed counsel to represent  
8 Herrada-Gonzalez. Id. The state district court held an evidentiary hearing on October 8, 2018.  
9 ECF No. 1-2 at 30. The state district court denied the petition on December 12, 2018. ECF No.  
10 1-2 at 26. Herrada-Gonzalez appealed. The Nevada Supreme Court affirmed on April 16, 2020.  
11 ECF No. 1-2 at 59-62.

12 Herrada-Gonzalez then delivered his § 2254 petition to a prison officer for mailing to this  
13 court on June 3, 2020. ECF No. 1-1 at 1.

### 14 **III. Discussion**

#### 15 **A. Herrada-Gonzalez can afford the filing fee**

16 The financial certificate and statements of inmate accounts show that Herrada-Gonzalez  
17 can afford the \$5.00 filing fee. ECF No. 1 at 4-14. The application to proceed in forma pauperis  
18 otherwise establishes Herrada-Gonzalez's eligibility for counsel under 18 U.S.C. § 3006A.  
19 Although the court is provisionally appointing counsel, Herrada-Gonzalez still must timely pay  
20 the filing fee, or the court will dismiss the action without further advance notice.

#### 21 **B. The court will appoint counsel provisionally**

22 The appointment of counsel is warranted in this action given the length of Herrada-  
23 Gonzalez's consecutive sentences and the number and complexity of the issues presented in the  
24 petition. The court will appoint counsel provisionally, subject to Herrada-Gonzalez's payment of  
25 the filing fee.

#### 26 **C. The court will grant the motion for leave to file additional grounds**

27 When the court will formally appoint counsel, assuming that Herrada-Gonzalez pays the  
28 filing fee, the court will give him the opportunity to file a counseled amended petition. Counsel

1 will determine what grounds to include in the amended petition. Nonetheless, in case relation  
2 back to a timely filed ground is necessary, the court will grant this motion.

3 **IV. Conclusion**

4 IT THEREFORE IS ORDERED that the petitioner's application to proceed in forma  
5 pauperis (ECF No. 1) is **DENIED**. The petitioner will have 30 days from entry of this order  
6 within which to have the filing fee of \$5.00 sent to the clerk of court. Failure to timely comply  
7 with this order will result in the dismissal of this action without further advance notice.

8 IT FURTHER IS ORDERED that the clerk of court will the petitioner in proper person  
9 two copies of this order. The petitioner, whether he arranges the payment himself or through  
10 counsel, must make the necessary arrangements to have a copy of this order attached to the check  
11 or other appropriate financial instrument paying the filing fee.

12 IT FURTHER IS ORDERED that the clerk file the petition,<sup>1</sup> the exhibits to the petition,  
13 the motion for appointment of counsel, and the motion for leave to file additional grounds,  
14 currently in the docket at ECF No. 1-1 through 1-4.

15 IT FURTHER IS ORDERED that petitioner's motion for appointment of counsel (ECF  
16 No. 2) is provisionally **GRANTED** as set forth herein. The counsel appointed will represent the  
17 petitioner in all federal proceedings related to this matter, including any appeals or certiorari  
18 proceedings, unless allowed to withdraw. The provisional grant of the motion is subject to the  
19 petitioner paying the filing fee within 30 days of entry of this order.

20 IT FURTHER IS ORDERED that the Federal Public Defender will have 30 days from the  
21 date of entry of this order either to undertake representation of petitioner or to indicate to the  
22 court the office's inability to represent petitioner. If the Federal Public Defender is unable to  
23 represent petitioner, then the court will appoint alternate counsel, subject again to establishment  
24 of financial eligibility. The court will set a deadline for filing of an amended petition or a motion  
25 seeking other relief after counsel has appeared. The court anticipates setting the deadline for 120  
26 days from entry of the formal order of appointment. The court does not signify any implied  
27 finding of tolling during any time period established or any extension granted. Petitioner always

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28 <sup>1</sup> The filing of the petition does not signify that the pleading is free of deficiencies.

1 remains responsible for calculating the limitation period of 28 U.S.C. § 2244(d)(1) and timely  
2 presenting claims. The court makes no representation that the petition, any amendments to the  
3 petition, and any claims in the petition or amendments are not subject to dismissal as untimely.  
4 See Sossa v. Diaz, 729 F.3d 1225, 1235 (9th Cir. 2013).

5 IT FURTHER IS ORDERED that the motion for leave to file additional grounds is  
6 **GRANTED.**

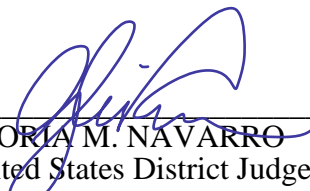
7 IT FURTHER IS ORDERED that the clerk add Aaron Ford, Attorney General for the  
8 State of Nevada, as counsel for respondents.

9 IT FURTHER IS ORDERED that respondents' counsel must enter a notice of appearance  
10 within twenty-one (21) days of entry of this order, but no further response will be required from  
11 respondents until further order of the court.

12 IT FURTHER IS ORDERED that the clerk shall provide copies of this order and all prior  
13 filings to both the Attorney General and the Federal Public Defender in a manner consistent with  
14 the clerk's current practice, such as regeneration of notices of electronic filing.

15 IT FURTHER IS ORDERED that, notwithstanding Local Rule LR IC 2-2(g), paper copies  
16 of any electronically filed exhibits need not be provided to chambers or to the staff attorney,  
17 unless later directed by the court.

18 DATED: June 10, 2020

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22 GLORIA M. NAVARRO  
23 United States District Judge  
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